IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 234 OF 1999

Shri S. R. Phal,
Ex-Reader, Goa University,
R/o Flat No.2, Above
Dr. Thali's Hospital,
Richie's Corner,
St. Cruz, Goa 403 005. ... Petitioner.

Versus

1. His Excellency the Visitor of Goa University, Raj Bhavan, Dona Paula, Goa, 403 004,

2. Goa University, through the Executive Council, through the Vice Chancellor, Taleigao Plateau, Sub-P.O. Goa University, Goa 403 203. An University constituted under Goa University Act, 1984,

3. The Director General of Police, Government of Goa, Police Head-quarters, Panaji, Goa, 403 001,

4. Shri D. V. Borkar, presently Registrar, Goa University, Taleigao Plateau, Goa 403 203, major, married, Indian national,

5. Shri V. S. N. Alornekar, then Asst. Registrar, Examination Section II of Goa University and Presenting Officer, presently, Registrar, District & Sessions Court and Special Judicial Magistrate, Panaji, Goa, 403 001, major, married, Indian national,

6. Shri Ganadhish Vinayak Keni, presently Lower Division Clerk, Department of Mathematics, Goa University,

Taleigao Plateau, Goa
403 203, major bachelor,
Indian national,
(Through the Registrar,
Goa University)

7. Shri Sudhakar Krishnanath
Golatkar, presently
Superintendent, Goa
University, Taleigao Plateau,
Goa 403 203, major, married,
Indian national.
(Through the Registrar,
Goa University) ... Respondents.

Shri S. G. Dessai, Senior Advocate with Shri D. B. Ambekar, advocate for the petitioner.

Shri P. A. Kamat, Government Advocate for the respondent nos.1 and 3.

Smt. A.A. Agni, advocate for respondent no.2.

Shri S. G. Bhobe, advocate for respondent no.6.

CORAM : SMT. NISHITA MHATRE &
P. V. HARDAS, JJ.

DATE : 13th January, 2004.

ORAL JUDGMENT (Per Smt. Nishita Mhatre, J.)

The petitioner impugns the order compulsorily retiring him from service on 4th April, 1997, pursuant to an enquiry held against him. The Order of compulsory retirement is based on the challenge to the enquiry held and the procedure adopted by the respondent University while holding the enquiry.

A few facts would be necessary to throw light on the present issue.

The petitioner was working as Reader in the University of Goa. It appears that he was then asked to

work as a Registrar of Examinations, during which period certain irregularities had been found and the petitioner was alleged to have been involved in permitting a student to use unfair means at the examination to obtain undue advantage. The petitioner was issued a chargesheet on 17th June, 1996, wherein five Articles of Charge were levelled against him. The crux of the charges against the petitioner was that while functioning as an Acting Examiner and Chairman of the Board of Examination of M.A. Sociology held in April, 1995, he entered into a conspiracy with the Controller of Examinations, the then Assistant Registrar (Exams) I, some unknown persons and the student one Rajesh P. Desai, to give the student undue advantage by permitting him to use unfair means. It was alleged that the petitioner was responsible for fabricating false answer books with highly inflated marks and that the petitioner either individually, or in connivance with the other officers and the student had altered the marks obtained by the student, without consulting the examiner. An enquiry was instituted against the petitioner as the respondents were not satisfied with the reply of the petitioner to the chargesheet. A joint enquiry was held against the petitioner and the other employees who were charged for the same offence. This enquiry was completed. Although the Enquiry Officer had held the petitioner guilty in respect of three Articles of Charge, the Disciplinary Authority took a different view and the petitioner was informed that the Disciplinary Authority had held him guilty of the

remaining two charges as well. At this stage, the petitioner was given the Enquiry Officer's Report and he was asked to show cause why the action of compulsory retirement should not be taken against him. The petitioner preferred his submissions against the punitive action which the Disciplinary Authority proposed to take against him. Not being satisfied with the submissions made by the petitioner, the Disciplinary Authority compulsorily retired the petitioner from service on 4th April, 1997. A departmental appeal was preferred by the petitioner against this Order, which was also decided against him on 24th March, 1998. Both these orders have been impugned in the present Writ Petition.

2. The basic challenge of the petitioner in the Writ Petition is that the enquiry held against him was not in accordance with the principles of natural justice and fair play. The learned counsel appearing for the petitioner submitted that since the question of forgery and fabrication of documents was involved in the present case, legal assistance should have been offered to the petitioner. He submits that the Enquiry Officer and the Presenting Officer were persons with legally trained minds and therefore, pitting the petitioner against such Presenting Officer was in violation of the principles of natural justice. The next submission of the learned counsel was that the procedure followed by the respondent University again did not comply with the principles of

natural justice. The petitioner was not given a copy of the Enquiry Officer's Report before the Disciplinary Authority decided to take a different view in the matter. According to the learned counsel, after the judgment in the case of **Union of India & Ors. vs. Mohd. Ramzan Khan**, (1991)1 SCC 588 and **Managing Director, ECIL, Hyderabad, etc. vs. B. Karunakar, etc.,** AIR 1994 SC 1074, it was incumbent on the University to supply a copy of the Enquiry Officer's Report immediately the proceedings had come to an end. Not having done so, the petitioner had been greatly prejudiced as he had not been able to make any submissions on the Enquiry Officer's Report. The learned counsel submits that by supplying the Report only after the Disciplinary Authority had decided to take a different view from the Enquiry Officer, the respondent University had greatly prejudiced the petitioner and had not complied with the rules of natural justice. He submits that in Writ Petition No.318/98 and 28/99, filed by the Controller of Examinations and another employee who was similarly charged for the same acts of mis-conduct and for the same incident as the petitioner, this Court had held by Judgment dated 28th February, 2001, that the enquiry conducted against those petitioners was not fair and proper as the Enquiry Officer's Report was not supplied to the delinquent employee as required in the cases of Mohd. Ramzan Khan and Karunakar (supra). The learned counsel submits that since a common enquiry was held against the petitioner in the present Writ Petition and the petitioners Writ Petition

Nos. 318/98 and 28/99, the enquiry held against the petitioner should be set aside. He submits that the petitioner has already been superannuated in 2000 and, therefore, he would be entitled to be exonerated, since had he been in service he would have retired in 2000 itself. The learned counsel, therefore, submits that to remand the matter back as was done in the other two petitioner, would greatly prejudice the petitioner.

3. The learned counsel appearing for the University submits that no prejudice whatsoever has been caused to the petitioner by not supplying him the Enquiry Officer's Report immediately after it was available. She submits that in any event the Report was submitted to the petitioner in accordance with Statute 115 applicable to the University after the Disciplinary Authority decided to take a different view of the matter and hold the petitioner guilty of all the charges levelled against him. She submits that this procedure has been followed by the University and, therefore, it was not open for the petitioner to challenge the procedure adopted by the respondent University.

4. In the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakar**, (supra), the Apex Court has considered the judgment in Mohd. Ramzan Khan 's case (supra). The issue framed by the Apex Court was whether the Report of the Enquiry Officer/authority who/which is

appointed by the Disciplinary Authority to hold an enquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the Disciplinary Authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. The Apex Court then framed the following incidental questions:-

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) will apply to all establishments - Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report should come into operation?

(vii) Since the decision in Ramzan Khan's case (AIR 1991 SC 471) (supra) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990, on which day the said decision was

delivered, this question in turn also raises another question, viz., what was the law prevailing prior to 20th November, 1990?"

The Apex Court while answering these questions has succinctly laid down the law as follows:-

"Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

Hence the incidental questions raised above may be answered as follows:

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311 (2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges.'

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it

prevents or prohibits the injury when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311 (2) applies only to members of the civil services of the Union or an all India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence the question (iv) is answered accordingly."

In the present case we need not consider the answers to the question nos.6 and 7.

5. In the present case, there is no doubt that the petitioner's rights have been affected by non-supply of the report. This is because the petitioner was not able to put forth his case as to how even charge nos.3, 4 and 5, which the Enquiry Officer had held against him had not been proved. The Disciplinary Authority had decided to differ from the finding of the Enquiry Officer and to hold the petitioner guilty of all the charges. This, obviously, could have been done only after the petitioner was supplied with the report. Not having done so, we are of the view that the order of compulsory retirement must be set aside. We are fortified in the view that we are taking, as in Writ Petition Nos. 318/98 and 28/99 this Court has already found that the procedure adopted by the respondent University was incorrect as the Enquiry Officer's report had not been supplied. Since a common enquiry was held against the petitioner herein and the petitioners in the other two Writ Petitions, we do not see any reason to take a different view.

6. We are not inclined to agree with the submission made by the learned counsel for the petitioner that legal assistance ought to have been afforded to the petitioner. The Presenting Officer was a law graduate but was merely in the administrative section and, therefore, he

could not be said to have a legally trained mind. In any event, in the earlier two Writ Petitions this Court has taken the view that the enquiry could not be vitiated on this ground.

7. Hence we pass the following Order:-

(i) The order of compulsory retirement dated 4th April, 1997, is set aside. The petitioner is permitted to make a representation and raise objections against the report of the Enquiry Officer within four weeks from today. The Disciplinary Committee will consider the same and decide the action to be taken against the petitioner which should be in accordance with law.

(ii) In the event the Disciplinary Committee decides to hold the petitioner guilty of mis-conduct by taking a different view from that of the Enquiry Officer, the petitioner shall be given an opportunity to present his case and show cause why such action should not be adopted.

(iii) In the event the University decides to take punitive action against the petitioner, it

would always be open for the petitioner to prefer an appeal in accordance with the rules applicable.

(iv) This entire process should be completed within a period of six months from today.

(v) The petitioner having already attained the age of superannuation in April, 2000, shall be treated on suspension from the date the impugned Order was passed till his superannuation and shall be paid subsistence allowance for that period within a period of eight weeks from today.

(vi) The Writ Petition is disposed of accordingly. No order as to costs.

SMT. NISHITA MHATRE, J.

P. V. HARDAS, J.

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